

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LORENZO C. GARRETT, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. H-05-3192
§
HEATHER N. CRUCE, *et al.*, §
§
Defendants. §

ORDER ON MOTIONS

Lorenzo Garrett has filed a motion to transfer and vacate void judgment. (Docket Entry No. 21). The motion appears to be yet another motion for reconsideration or for new trial. It is denied as without merit.

Garrett has also filed an application to proceed *in forma pauperis* on appeal. (Docket Entry No. 22). Rule 24 of the Federal Rules of Appellate Procedure provides in relevant part:

A party who was permitted to proceed in forma pauperis in the district-court action, . . . may proceed on appeal in forma pauperis without further authorization, unless:

A. the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding.

FED. R. APP. P. 24(a)(3). The Committee Note makes clear that the court is to determine whether a frivolous appeal is being pursued by a *pro se* litigant:

The [Rule] permits one whose indigency has been previously determined by the district court to proceed on appeal in forma pauperis without the necessity of a redetermination of indigency, while reserving to the district court its statutory authority to certify that the appeal is not taken in good faith, 28 U.S.C. § 1915(a)

FED. R. APP. P. 24 Committee Note.

The Fifth Circuit has set forth the standard that a district court must follow in deciding whether to grant a party leave to appeal *in forma pauperis*:

Under 28 U.S.C. § 1915(a), a federal court may refuse to certify an appeal for in forma pauperis status if it is not taken in good faith. *See also* FED. R. APP. P. 24(a). “Good faith” is demonstrated when a party seeks appellate review of any issue “not frivolous.”

Howard v. King, 707 F.2d 215, 219–220 (5th Cir. 1983) (citations omitted). In a detailed Memorandum and Opinion, this court found no legal point arguable on the merits. Finding that appeal would be frivolous, this court certifies that the appeal is not taken in good faith and that Garrett should not be allowed to proceed on appeal *in forma pauperis*. If Garrett disagrees with this court’s finding regarding IFP status, he may petition the Fifth Circuit for a review of the decision.

Garrett has also moved to stay the final judgment. (Docket Entry No. 24). The motion is denied as without merit.

SIGNED on February 3, 2006, at Houston, Texas.



Lee H. Rosenthal
United States District Judge